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10 *Attorneys for Plaintiffs*
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13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR VENTURA COUNTY

15 Patricia Hickerson, etc., et al.,
16

17 Plaintiffs,
18 vs.
19 Financial Freedom Senior Funding
Corporation, et al.,
20 Defendants.

Case No. 56-2008-00310670-CU-CO-SIM

**DECLARATION OF JURY
FOREPERSON CATHERINE BERNING
IN SUPPORT OF PLAINTIFFS'
MOTIONS**

21 Date:
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26 Time:
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AND RELATED CROSS-COMPLAINT

1 I, Catherine Berning, hereby declare as follows:

2 1. I am a resident of Simi Valley, California, over the age of eighteen, and make this declaration
3 freely and truthfully. I am not a party in the above-entitled action. I have resided in California at all
4 times relevant to the facts and circumstances set forth herein. I have personal first-hand knowledge of all
5 of the facts stated herein, and am competent to testify to those facts. Should I be called to testify as a
6 witness, I could and would testify truthfully and completely.

7 2. I served as the foreperson of the jury during the trial of the above-entitled action, and was
8 witness to the following events and occurrences. I was elected as the foreperson on Friday, September
9 23, 2011. The jury deliberated on Friday, September 23rd, Tuesday, September 27th, Wednesday,
10 September 28th and until Thursday, September 29, 2011.

11 3. After the jury received the jury instructions from the judge and began deliberating, the entire
12 panel was confused as to what standard of proof was applicable to the claims and questions in the
13 verdict form. The panel debated as to whether to apply the preponderance of the evidence standard, i.e.
14 more likely than not, or the higher standard of clear and convincing. Verdict Form question number 16
15 indicated that the clear and convincing standard was applicable, so the jury decided to apply the clear
16 and convincing standard. The jury asked the judge for written clarification several times as to what the
17 exact wording and definitions of words meant on the 19 questionnaire and also on the 51 pages of jury
18 instructions.

19 4. A majority of the jury members thought that fraud was committed by Financial Freedom
20 Senior Funding Corporation (Defendant Financial Freedom) and that Defendant Financial Freedom
21 concealed important costs regarding the reverse mortgage. The jury concluded that even though
22 Defendant Financial Freedom committed fraud and concealed information, it did not matter and would
23 not make a difference because Richard Hickerson wanted the reverse mortgage. Furthermore, we did
24 not agree on what a material fact was in trying to answer several of the questions.

1 5. During the deliberations certain information from various jurors came to the surface which
2 disclosed on voir dire. For instance, Juror # 4, Leo Maciel, failed to disclose that he had a reverse
3 mortgage during voir dire, even though the Judge asked for anyone that had a reverse mortgage to tell
4 the attorneys. Mr. Maciel disclosed that he had a reverse mortgage on the last day of deliberation,
5 Thursday, September 29, 2011. On that day, he indicated that he was content with his reverse mortgage
6 and that he and his wife had been traveling on the proceeds from it. He said that his reverse mortgage
7 had lower costs than the Plaintiffs', and he voiced his belief that reverse mortgage companies had
8 already eliminated the high-cost problems associated with reverse mortgages so that was not an issue the
9 jury needed to worry about. Mr. Maciel used his experience as a person with a reverse mortgage to
10 analyze the evidence presented and influenced the other members of the jury by discussing this
11 information with them.

12 6. Juror # 9, Keith Brownley, an IT person that works in a law firm, voiced legal interpretations
13 based on his law firm experience regarding some of the evidence presented, including relevance of a
14 quit claim deed. He said that this piece of evidence supported the position of the Defendants, even
15 though the Defendants never referenced it. He used his knowledge of the law from his work to draw
16 conclusions and influence the other members of the jury. He questioned me regarding the fees that were
17 imposed by Defendant. Other jury members and I were of the opinion that the fees of the Hickersons'
18 reverse mortgage were too high, but Mr. Brownley argued with us and said that they were not too high.
19 Mr. Brownley also insisted that defendant's failure to offer the Hickersons a choice of estate planning
20 services, other than Preferred Services, was not legally significant because he felt that no one would
21 inquire about other providers. Most of us did believe that this took away the Hickersons right to make
22 choices. On numerous occasions he voiced his strong desire to end deliberations and return to work
23 because he had an October 1 deadline to meet. Mr. Brownley initially wanted to be the jury foreperson.
24 He raised his voice, yelled at, and intimidated jury members during deliberations, including me for
25 taking too long in reviewing the evidence. By raising his voice at me and others, he pressured us to
26 conclude deliberations before I felt comfortable doing so. He yelled, "Come on Cathy!" at me when he
27 thought that I was taking too long to examine the evidence. Mr. Brownley also expressed medical
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1 opinions about some of the medical testimony and decided on his own knowledge that there were no
2 side effects from Alzheimer's medication and expressed this opinion to the rest of the jury.

3 7. Juror #12, Lisa Luna, (who also wanted to be the foreperson on this case) disclosed to the
4 other jury members during deliberations that prior to her father's passing in June 2011, he withdrew
5 money from his bank accounts and paid off the home mortgage and car loan so that his wife would not
6 have to make payments after his death. She told the jury that her father, who passed away from cancer
7 like Mr. Hickerson, was in prime mental shape until his death. She used her experience as a basis to
8 infer that Richard Hickerson was of sound mental condition when he obtained his reverse mortgage, and
9 that he knew what he was doing when he bought the reverse mortgage because he wanted to take care of
10 his wife financially like her father did for his mother. She believed that because Mr. Hickerson bought
11 Mrs. Hickerson a bike that he was of sound mental condition when he entered into the reverse mortgage.
12 She used her prior experience with her family to extrapolate that the Hickersons acted similarly to her
13 own family. Also, she got aggressive with me when we discussed the significance of Exhibit 281, a
14 letter from the loan agent Leslie Barnhart to the Hickersons that indicated that Mr. Barnhart was a
15 Certified Senior Advisor. She said that it was not illegal for Mr. Barnhart to represent himself in this
16 way and that it did not show intent to defraud the Hickersons. Ms. Luna extrapolated further from her
17 life experiences when she told stories about how her daughter works at a bank and witnesses elder abuse
18 when children make their parents withdraw money for them. Finally, Ms. Luna expressed her beliefs
19 that Sandy Jolley's family was dysfunctional because Kristen Jolley, Sandy's daughter, did not address
20 or embrace her mother before leaving the courtroom. She also insisted that Sandy Jolley should have
21 been employed instead of taking care of her mother, Patricia Hickerson, full-time; she believed that
22 Sandy Jolley should have hired a caretaker. Ms. Luna further insisted that Sandy Jolley was taking
23 advantage of her mother. Ms. Luna extrapolated from these beliefs to conclude that Sandy Jolley was
24 not credible. She shared this belief with the other members of the jury.
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26 8. Juror # 11, Lori Fitch, said that she did not believe Dr. Sutton or Dr. Masterman because of
27 her own experience with the doctors. She said that her daughter is a patient of theirs and she believed
28 that they would give opinions to support a patient's position at trial rather than to tell the truth. She also

1 said that she knows the Hickersons' neighbor and it was concerning to her that the neighbors or other
2 friend were not called as a witness. Even though there was no testimony or evidence to support this, Ms.
3 Fitch believed that Sandy Jolley, the Hickersons' daughter, got fired from her job in India and she
4 returned home so that she could live-off her parents. She insisted on knowing why Ms. Jolley was not
5 employed. She also expressed skepticism that Ms. Jolley really researched how reverse mortgages
6 worked because Ms. Jolley testified that she did not know that the interest on the reverse mortgage could
7 be paid down. She expressed disbelief that Kristen Jolley spent time at the Hickersons' home because
8 they only had the home for 25 years, and she believed that Kristen was too old to have spent time there.
9 Finally, Ms. Fitch assumed that the Hickersons had refinanced their home at least several times while
10 living there.

11 9. Juror # 1, Jeff Liggett, told the jury some conclusions that his wife made regarding
12 Alzheimer's patients. He told the jury that his wife was a nurse for thirty years and that she knows a lot
13 about Alzheimer's, including that the symptoms of the disease are gradual. He said it was his wife's
14 opinion that generally Alzheimer's patients progress very slowly therefore he thought this could also be
15 the case for Mrs. Hickerson; that is, her condition would not have progressed very far or been that severe
16 from 2002-2005.

17 10. Juror # 5, Gary Greenfield, said he believed the Hickersons were mentally capable of
18 entering into the reverse mortgage. He explained that his grandmother had Alzheimer's and he said that
19 she was capable of making similar decisions because her Alzheimer's had not progressed too rapidly.

20 11. There was discussion among the jury that Sandy Jolley influenced the declaration of Dr.
21 Margolis, so as to make it more beneficial to her parents' case. Because most of the jury didn't like
22 Sandy Jolley or find her credible during her testimony, several said that they didn't want her to get her
23 parents' house.

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
2 and correct. Executed on October 12, 2011 at Simi Valley, California.

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5 Catherine Berning
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